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CRIME PREVENTION AND CRIMINAL JUSTICE

Capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty

Report of the Secretary-General

SUMMARY

At its fifty-fourth session, the Economic and Social Council invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment (Council resolution 1745 (LIV)). In its resolution 1990/51, the Council requested the Secretary-General, in preparing the fifth quinquennial report, to draw on all available data, including current criminological research, and recommended that the quinquennial reports, starting with that to be submitted to the Council in 1995, should also cover the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (Council resolution 1984/50, annex). The present report, prepared also in pursuance of Council decision 1994/206 of 3 February 1994, reviews the use of and trends in capital punishment, including the implementation of the Safeguards, during the period 1989-1993.

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INTRODUCTION

1. In its resolution 1745 (LIV), the Economic and Social Council requested the Secretary General to submit to the Council, at five-year intervals, updated and analytical reports on the question of capital punishment. The first quinquennial report, submitted by the Secretary-General in 1975, covered the period 1969 to 1973 (E/5616 and Add.1 and Corr.1 and 2). The second quinquennial report, prepared in 1980 and covering the period 1974 to 1979 (E/1980/9 and Corr.1 and 2, Add 1. and Corr.1, and Add.2 and 3), was also submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Caracas, 25 August-5 September 1980) in accordance with Economic and Social Council resolution 1980/142. The third quinquennial report, covering the period 1979 to 1983 (E/1985/43 and Corr.1), was considered by the Council in 1985 and by the Seventh United Nations Congress. The fourth quinquennial report, covering the period 1984 to 1989 (E/1990/38/Rev.1 and Corr.1 and Add.1), was considered by the Council at its first and second regular sessions of 1990, and by the Eighth United Nations Congress.

2. In pursuance of Council resolutions 1984/50 and 1986/10, section X, the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). In that report, which was based on replies from 74 countries, it was noted that the review justified the concern expressed by the Human Rights Committee that inadequate progress had been made towards abolishing or limiting the application of the death penalty. 1/

3. The Economic and Social Council, in its resolution 1989/64, decided that future reports on capital punishment and on the implementation of the safeguards would be combined. Further, in its resolution 1990/29 and 1990/51, the Council invited Member States to provide the Secretary-General with the information required for the preparation of the fifth quinquennial report and requested the Secretary-General to draw on all available data, including current criminological research, as well as comments from specialized agencies and intergovernmental and non-governmental organizations. In his notes verbales of 22 November 1994 and 10 March 1995, the Secretary-General requested Governments to provide relevant information in order to facilitate his efforts to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general during the period 1989-1993.

I. BACKGROUND AND SCOPE OF THE REPORT

4. In analysing the responses received - as was the practice in the first four surveys - countries have been classified as abolitionist, abolitionist de facto or retentionist. Countries that do not contemplate the death penalty in their laws, either for ordinary or for military offences, are regarded as abolitionist. Countries that retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more are considered abolitionist de facto. All others are defined as retentionist, i.e., the death penalty is in force and executions have taken place.

5. In comparing the results of the fifth survey with those of the previous four, it should be recalled that in those surveys countries were classified according to their death penalty status at the time that the report was written rather than at the beginning of the five-year period. Of the 49 States that responded to the first capital punishment survey (1969-1973), 23 were abolitionist and 26 retentionist. Of the 74 States responding to the second survey (1974-1978), 26 were abolitionist (16 for all crimes and 10 for ordinary crimes), 47 were retentionist and 1 was divided on the issue (i.e., it had the death penalty in some jurisdictions but not others). The third survey (1979-1983) elicited 64 responses: 25 from abolitionist States (20 for all crimes and 5 for ordinary crimes), and 39 from retentionist States. Fifty-five States responded to the fourth survey (1984-1988): 32 were abolitionist (26 for all crimes and 6 for ordinary crimes) and 23 retentionist, of whom 5 could be considered abolitionist de facto (having had no executions for 10 or more years). Thirty-nine of those 55 States also responded to a questionnaire on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, responses to which were received in May 1988, together with responses from 34 other States that did not respond to the fourth survey. Thus, the total number of responses to both surveys was 89. It is against that benchmark that the response rate to the fifth (combined) survey should be compared.

6. The current survey, covering the years 1989-1993, yielded responses concerning 57 States: 54 governmental and three non-governmental 2/ responses. Thirty-nine of those States were abolitionist (29 for all crimes, including 5 countries that emerged as new States during the quinquennium, and 10 for ordinary crimes); while 18 were retentionist, 7 of those being considered abolitionist de facto.

7. During 1989-1993, the proportion of all responding countries that were retentionist declined. In the first three quinquennial surveys, the proportion was 53 per cent, 64 per cent and 61 per cent, whereas in the fourth and fifth surveys they accounted for 42 per cent and 32 per cent respectively. In May 1995, out of 70 countries or territories listed as abolitionist, either completely or for ordinary offences, 37 (53 per cent) replied to the fifth survey (see annex IV, tables 2 and 3), while only 19 (20 per cent) of 97 retentionist countries or territories provided information.

8. Comparisons between surveys are vitiated by the fact that countries that respond to one questionnaire do not always reply to the next. Thus, 46 of the 89 countries that responded to the fourth survey or the survey on safeguards or both in 1990 did not respond to the fifth survey. Thirty two (70 per cent of those countries were retentionist (6 being considered abolitionist de facto). However, of the 57 that responded to the fifth survey (including non-governmental organizations), only 13 (including 5 new independent States) had not replied to either of the 1990 surveys. Thus, while a number of countries consistently respond to the surveys, an equally large number do not and the majority of those are retentionist countries.

9. It should also be noted that the extent to which responding countries completed all relevant sections of the questionnaire varied considerably: a few abolitionist countries considered it sufficient to send a note to this effect,

while many retentionist countries either provided no information on the number of death sentences or executions over the quinquennium or did not reply to questions on policy changes between 1989 and 1993.

II. CHANGES IN DEATH PENALTY STATUS 1989-1993

10. Of the 57 countries from which information was received, five were in North Africa and the Middle East (Egypt, Israel, Morocco, Tunisia and Qatar); four in Asia and the Pacific (Bangladesh, Sri Lanka, Thailand and Tonga); 12 in Latin America and the Caribbean (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Paraguay, Peru, Uruguay and Venezuela); 10 in Eastern Europe (Belarus, Bosnia and Herzegovina, Croatia, the Czech Republic, the former Yugoslav Republic of Macedonia, Poland, Romania, Slovakia, Slovenia and Ukraine); five in Africa south of the Sahara (Burundi, Guinea, Mauritius, Namibia and Sao Tome and Principe) and 21 in Western Europe and other States (Australia, Austria, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom of Great Britain and Northern Ireland).

11. As mentioned above, previous reports listed countries according to their status in relation to the death penalty either at the end of the quinquennium under review or at the time of writing of the report. In addition, any changes that had taken place in law or in practice during the five years covered by the report were noted. In order to obtain a better overall appreciation of the changes that have taken place since the fourth report was submitted, the replies to the fifth survey have been analysed relative to the death penalty status of countries in 1989 so that the movement of law, practice and opinion over the period being surveyed can be readily perceived and more clearly assessed (see also annex I below).

A. Countries that had already abolished the death penalty for all crimes by 1989

12. By 1989, 18 of the 57 responding countries had already completely abolished the death penalty for all crimes: Australia, Austria, Colombia, Denmark, Ecuador, Finland, France, Germany, Iceland, Luxembourg, Monaco, Netherlands, Norway, Portugal, San Marino, Sweden, Uruguay and Venezuela. According to the Andean Commission of Jurists, proposals to reintroduce the death penalty in Ecuador and Venezuela came before the legislatures of both countries in 1994 but were not accepted. Indeed, a change in the Constitution of Ecuador (article 19 of which bars the death penalty) would be required to reintroduce capital punishment in that country.

B. Countries that had already abolished the death penalty for ordinary crimes by 1989

13. By 1989, capital punishment had already been abolished for ordinary crimes in a further 11 responding countries: Argentina, Brazil, Cyprus, Israel, Malta,

Mexico, Peru, Spain, Sao Tome and Principe, Switzerland and the United Kingdom. While those countries retained the death penalty in exceptional circumstances, notably in time of war for military crimes and for certain crimes against the State, no executions had taken place in any of them for at least 10 years; they could therefore be regarded as abolitionist de facto as far as such offences are concerned. For example, Mexico considered itself as a de facto abolitionist country: although the Constitution of the United Mexican States provided for the death penalty for several categories of murder, the penal codes of individual Mexican States made no provision for it. And while the Code of Military Justice provided for capital punishment for specific offences, in practice, under article 130 of the Code the death sentence was always commuted to long-term imprisonment.

14. Peru replied that it was among those countries that favoured the abolition of the death penalty as far as ordinary crimes were concerned and was indeed abolitionist in that sense. However, the death penalty had been approved by a national referendum, under article 140 of the Constitution of 1993, for two offences against the State: treason and terrorism carried out within the country (it was already a capital offence to commit such acts in the context of a foreign war). Although that extension was a special measure adapted in response to a civil war being waged by criminal bands, no legislative provisions had yet been introduced into the Peruvian Criminal Code to specify in criminal law the acts for which the death penalty could be imposed or to determine the relevant criminal procedures. In addition, no decision had been taken on whether the death penalty was to be mandatory or discretionary for such offences, although it had been established that they were to be tried by a military tribunal. The Andean Commission of Jurists, in its reply to the fifth survey, claimed that the new law was in conflict with article 4.2 of the American Convention on Human Rights, which prohibited any extension of the death penalty, and with article 4.4, which prohibited its extension to political crimes or related common crimes. The Commission also reported that, in October 1994, a popular initiative to abolish the death penalty had been submitted to the Peruvian Congress so as to modify the Constitution; that proposal was being studied by the Congress.

15. Sao Tome and Principe in 1990 and Switzerland in 1992 completely abolished the death penalty. Switzerland cited the following reasons for abolishing the death penalty under its Military Penal Code: the death penalty was a flagrant violation of the right to life and dignity; the time awaiting execution constituted inhumane treatment; in the event of judicial error, there could be, by definition, no reparation; the deterrent effect had not been demonstrated; and the arguments in favour of the abolition of the death penalty in peacetime were just as valid concerning its abolition in wartime because there could not be two ways to guarantee human rights.

16. Cyprus reported that the competent authorities were contemplating the revision of a number of obsolete sections (36 (treason), 37 (instigating invasion) and 69 (piracy)) of its Criminal Code as well as the amendment of the context of capital military offences so as to abolish the death penalty absolutely. The reason for retaining the death penalty, which had for many years fallen into disuse on account of social evolution and changed social attitudes on capital punishment and which had never been inflicted for military

offences, was said to be connected with the highly anomalous situation that had been caused by the Turkish invasion and occupation of a large part of the country since 1974.

17. At the end of November 1994, a bill was presented to the Spanish Congress by parliamentary groups to abolish capital punishment under the Military Penal Code of Spain. The bill was accepted by all parties at the end of April 1995 and would become law after its official publication. Spain explained that in this way its Constitution, reflecting the general sentiment of the citizenry, was brought into conformity with the school of thought favouring the abolition of the death penalty because, while the right of all to life was guaranteed, the maintenance of the death penalty implied legitimating the denial of life. Referring to recommendation 1246, adopted on 4 October 1994 by the Parliamentary Assembly of the Council of Europe, which took the view that the death penalty had no place in the general penal system of advanced, civilized societies, the Spanish reply concluded that no more degrading or afflictive punishment could be imagined than to deprive a person of his life, nor could anyone conceive of anything more contrary to the philosophy of punishment enshrined in its Constitution, in which punishment was seen as a means of rehabilitation, than the deprivation of life. That view was shared by a number of other abolitionist countries. For example, Uruguay, which had abolished capital punishment in 1907, considered that the application of the death penalty as a punishment related to the old criminal law concept of retribution that had been totally superseded in the history of mankind. In the view of Uruguay, punishment must fulfil the objective of social rehabilitation and that was clearly in contradiction with an irrevocable sentence involving the death of an individual.

18. Replies suggested that there were no plans to abolish capital punishment for offences against the State or military offences in time of war in Argentina, Brazil, Israel, Malta, Mexico or the United Kingdom, even though it was regarded in Malta as a dead letter and in the United Kingdom as existing in theory only. What were described as political initiatives to reinstate the death penalty in Argentina failed to get parliamentary approval, as did non-governmental moves in 1990 to reintroduce the death penalty for murder in the United Kingdom. The official reply from Brazil stated that the death penalty was not contemplated in the Brazilian juridical system.

C. New independent States, created after 1989, that abolished the death penalty

19. Five of the States that are now abolitionist only came into existence after 1989. The Parliament of former Czechoslovakia voted to abolish capital punishment in May 1990. The Czech Republic replied that capital punishment had been abolished after the elimination of the totalitarian regime in response to public opinion. Abolition of the death penalty came into effect in both the Czech Republic and Slovakia on 1 July 1990. Three successor States of former Yugoslavia became totally abolitionist: Croatia under its Constitution of 1990, and the former Yugoslav Republic of Macedonia and Slovenia in 1991, when the abolition of the death penalty was embodied in their new constitutions. The former Yugoslav Republic of Macedonia cited modern views in penology that negated the need for the death penalty, democratic developments in its society

and the constitutional guarantee to the right to life, while Slovenia referred to its Constitution, article 17 of which stated that human life was inviolable and that there should be no capital punishment in Slovenia.

D. Retentionist countries in 1989

1. Countries that were abolitionist de facto in 1989

20. Five of the 57 responding countries had been considered abolitionist de facto in 1989: Bolivia (last execution in 1974), Bosnia and Herzegovina (last execution in 1975), Greece (last execution in 1972), Paraguay (last execution in 1917) and Sri Lanka (last execution in 1976). Three of those countries replied that they had abolished the death penalty during the quinquennium: Paraguay and Bolivia completely and Greece for ordinary offences.

21. Paraguay, in reporting that it had abolished capital punishment for all crimes in 1992 under article 4 of its new Constitution, stated that following the world trend towards abolition of the death penalty, social developments in Paraguay, particularly since the coup d'état in 1989, had contributed to the decision by the Constituent National Convention, to abolish the measure. Moreover, Paraguay had declared its observance of the international covenants, treaties and conventions concerning the protection of human rights and fundamental freedoms.

22. Bolivia stated that it was an abolitionist State in that the death penalty was not permitted and that under article 17 of its Constitution, the penalty for murder, parricide and treason was 30 years' imprisonment. The Penal Code drafted under a former military government was therefore in the process of being amended by a democratic State in which constitutional guarantees were fully applied, the death penalty being banned from civil and military justice.

23. Greece, which became abolitionist in terms of offences under ordinary criminal law in December 1993, reported that it expected soon to abolish the death penalty for military offences during peacetime. That change was due to the need for respect and harmonization with the provision of article 2, paragraph 1 of its Constitution, which recognized that human life was of supreme value, along with the ascertainment, from the point of view of the general prevention of crime, that the efficiency of the death penalty was non-existent.

2. Countries that retained and enforced capital punishment prior to 1989

24. Eighteen of the 57 States from or in relation to which replies were received had been retentionist in 1989: three from the Asia and the Pacific region (Bangladesh, Thailand and Tonga), four from sub-Saharan Africa (Burundi, Guinea, Mauritius and Namibia), four from North Africa and the Middle East (Egypt, Morocco, Qatar and Tunisia), four from Eastern Europe (Belarus, Poland, Romania and Ukraine) and two from Latin America and the Caribbean (Chile and Guatemala).

25. Two of those 18 countries became abolitionist for all crimes during the reporting period: Namibia, on attaining independence in March 1990, when capital punishment was prohibited by the Constitution (art. 6 (Protection of life)) and Romania, in response to public opinion and as a result of the collapse of the communist dictatorship, by a decree of 7 January 1990.

26. Poland halted executions in April 1988 and no death penalty had been imposed for an ordinary offence since June 1992. The death penalty had been abolished for organizing and directing a major economic crime (23 February 1990) on the grounds that public opinion did not accept the death penalty for economic crimes. The draft of the new Polish Penal Code, which provided for the total removal of capital punishment, had been submitted for public discussion and would probably be presented to Parliament in 1995.

27. While Burundi, Guatemala, Guinea and Tonga retained the death penalty, their last executions were in 1982, 1983, 1983 and 1982 respectively, making all four countries abolitionist de facto by the end-date of the survey. Burundi and Guinea had no plans to abolish the death penalty but the Judge of the Supreme Court of Justice of Guatemala, who was entrusted with the completion of the questionnaire, gave it as his opinion that the death penalty should be abolished in Guatemala provided that, in accordance with the San José Pact, imprisonment achieved the purpose of reintegrating the convicted offender into society through a process of re-education and rehabilitation.

28. Turkey stated that its policy was aimed not at abolishing the death penalty but at reducing and limiting the offences carrying the death penalty. In pursuit of that policy it had, through acts dated November 1990 and June 1991, abolished the death penalty for offences relating to narcotics. Noting that the last execution was in 1984, Turkey declared that it could be classified among the de facto abolitionist countries. The response from the Andean Commission of Jurists concerning Chile noted that the death penalty had been abolished for certain offences during 1989-1993 but did not specify those offences. It also noted that since 1990 when Chile started its transition to democracy, a series of legal reforms had been undertaken to modify the legal system to take into account international procedures for the protection of human rights. The last execution in Chile was in 1985, which might indicate a move towards an abolitionist de facto status. The reply from Mauritius, where the last execution was in 1987, stated that the Mauritian Prime Minister had made an official statement to the effect that no death sentence was to be carried out for the time being. Nevertheless, when in February 1992 the Judicial Committee of the Privy Council in London ruled that a section of the Dangerous Drugs Act 1986 that provided for the death penalty was unconstitutional, the Mauritius National Assembly almost immediately amended the law (April 1992) so as to provide a mandatory death penalty for drug trafficking. 3/ Tunisia, where the last execution was in October 1991, stated that the current trend was not to actually carry out death sentences: over 20 death sentences had not been executed.

29. Bangladesh, Belarus, Egypt, Morocco, Thailand, Ukraine and Qatar retained the death penalty. However, both Belarus and Ukraine had abolished it for a number of offences since they became independent States. Ukraine repealed the death penalty for 12 offences, citing as reasons socio-economic changes and the

implementation of measures ensuring human rights protection in accordance with international agreements. Between 1992 and 1994, the Supreme Soviet of the Republic of Belarus, because it was recognized that under the new socio-economic conditions it was inappropriate, abolished capital punishment for economic crimes, such as the taking of bribes under aggravating circumstances and the theft of State property in particularly large amounts. Belarus also reported changes in the bases for the application of capital punishment: capital punishment remained only as an extraordinary measure (followed by its commutation), imposed only for the commission of particularly severe crimes listed in the Penal Code, and was no longer to be imposed on women. Although Thailand gave no indication of any plans to abolish or limit the scope of the death penalty, death sentences had in fact been commuted since the last execution in September 1987.

30. Among the retentionist countries, only Bangladesh had extended the death penalty during the quinquennium: its Narcotics Control Act of 1990 gave discretion to the Court to impose the death sentence for offences involving the cultivation, production, possession, carrying, sale, purchase or storage of heroin, cocaine and other dangerous drugs. Moreover, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported that he had received information that the Parliament of Bangladesh had approved on 1 November 1992 the Curbing of Terrorist Activities Act. That law reportedly extended the death penalty to a number of offences for which the maximum punishment had previously been imprisonment: nine offences listed under the heading of terrorism or anarchy were said to be punishable with from five years' imprisonment to the death penalty, there being no link between specific offences and specific punishments (see E/CN.4/1994/7, para. 136).

E. Major changes since 1989

31. Comparing the death penalty status of the 57 responding countries in 1989 with their status at the end of 1994, countries can be grouped as follows:

	Number of countries
Have remained totally abolitionist	18 a/
Have become totally abolitionist b/	12 c/
Have ceased executions and expect to abolish the death penalty completely in the near future	1 d/
Have remained abolitionist for ordinary crimes	8 e/
Have become abolitionist for ordinary crimes	1 f/
Have remained abolitionist de facto	2 g/
Have become abolitionist de facto	5 h/
Appear to be moving towards abolitionist de facto status	3 i/
Have recently carried out executions and have no plans to abolish the death penalty or refrain from carrying out executions	7 j/

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a/ Australia, Austria, Colombia, Denmark, Ecuador, Finland, France, Germany, Iceland, Luxembourg, Monaco, the Netherlands, Norway, Portugal, San Marino, Sweden, Uruguay and Venezuela.

b/ Including five new independent States.

c/ Bolivia, Namibia, Romania, Paraguay, Sao Tome and Principe, Switzerland and the new States of Croatia, the Czech Republic, the former Yugoslav Republic of Macedonia, Slovakia and Slovenia. In addition, the Spanish Parliament has voted to abolish the death penalty.

d/ Poland.

e/ Argentina, Brazil, Cyprus, Israel, Malta, Mexico, Peru and the United Kingdom.

f/ Greece.

g/ Bosnia and Herzegovina, and Sri Lanka.

h/ Burundi, Guatemala, Guinea, Tonga and Turkey.

i/ Mauritius (last execution in 1987), which stated that death sentences would not be carried out for the time being; Chile (last execution in 1985); and Thailand (last execution in 1987).

j/ Bangladesh, Belarus, Egypt, Morocco, Qatar, Tunisia and Ukraine. Qatar provided no information on the number of death sentences or executions. It should be recalled that Tunisia (last execution in 1991) stated that the current trend was not to actually carry out death sentences.

/...

32. On the basis of the replies received, it appears that there has been a considerable shift towards the abolition of the death penalty both de jure and in practice. However, it will be recalled that the number and proportion of retentionist States that responded to the survey was small.

33. From information available on those countries that did not reply to the survey, it emerges that 10 countries have completely abolished capital punishment since 1989; i.e.:

(a) Andorra (1990) and Ireland (1990), which were formerly considered abolitionist de facto;

(b) New Zealand (1989) and Italy (1994), which were formerly abolitionist for ordinary crimes;

(c) Angola (1992), Cambodia (1989), the Gambia (1993), Guinea-Bissau (1993); Hungary (1990) and Mozambique (1990), which were formerly retentionist.

In addition, Nepal became abolitionist for ordinary crimes in 1990.

34. Thus, combining this information with the results of the fifth survey, it appears that since 1989 24 countries have abolished capital punishment, 22 of them for all crimes in peacetime or in wartime. An up-to-date list of abolitionist and retentionist countries is contained in annex IV below.

35. Among other countries that did not reply to the fifth survey, several are known from other sources to have reduced the scope of the death penalty. For example, a number of States that have become independent from the former USSR have abolished capital punishment for various economic crimes. 4/ The report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe on the abolition of the death penalty (September 1994), which was based on official replies from Governments, revealed that Bulgaria had introduced a moratorium on the use of the death penalty during 1992 and 1993 and that discussion of abolition was continuing in the Legislative Committee of the National Assembly and in the Constitutional Court; in Estonia, new legislation was being worked out that might abolish the death penalty; in Lithuania, the Parliament of the Republic might adopt a law on the moratorium of application of the death penalty in peacetime; in Latvia, a law on the abolition of capital punishment was being drafted; and article 24 of the draft constitution of the Republic of Moldova envisioned the abolition of the death penalty. In addition, Albania had substantially reduced the number of capital offences.

36. Thirteen non-responding countries that were already considered abolitionist de facto in 1989 have remained so. 5/ In addition, five more States have become de facto abolitionist, 6/ while Mongolia, Taiwan Province of China and South Africa have abolished the death penalty for a range of offences.

37. As stated by Pope John Paul II in his encyclical entitled "Evangelium vitae" of 25 March 1995, a growing tendency in both the Church and civil society

can be seen to demand that the death penalty be applied in a very limited way or else be abolished completely. As stated by the Pope, the problem must be viewed in the context of a system of penal justice even more in line with human dignity and thus, in the end, with God's plan for man and society. The primary purpose of the punishment that society inflicts is to redress the disorder caused by the offence in question. Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime as a condition for the offender to regain the exercise of his or her freedom. In this way authority fulfils the purpose of defending public order and ensuring people's safety while at the same time offering the offender an incentive and help to change his or her behaviour and be rehabilitated. It is clear that, for these purposes to be achieved, the nature and extent of the punishment must be carefully evaluated and decided upon and ought not to go to the extreme of executing the offender except in cases of absolute necessity, in other words, when it would not be possible otherwise to defend society. Currently, however, as a result of steady improvements in the organization of the penal system such cases are very rare if not practically non-existent.

38. The cumulative movement towards the restriction and abolition of the death penalty has not been universal. Capital punishment has been reintroduced in at least four countries since 1989. The first to do so was Papua New Guinea in 1991 for wilful murder (it had been abolished for ordinary crimes in 1975). After abolishing it completely in 1987, the Philippines brought back capital punishment in 1992 for a wide variety of offences: treason, kidnapping for ransom, drug trafficking, murder if accompanied by torture and mutilation, rape if committed in front of others or if the victim becomes insane, piracy, hijacking, arson and serious illegal desertion. Georgia abolished the death penalty in February 1992 on becoming a sovereign State, only to reinstate it in November of the same year for a number of offences. In the United States of America, capital punishment was reintroduced for murder in the states of Kansas (1994) and New York (1995), and the scope of the death penalty was considerably extended in federal law. Among retentionist countries, at least 15 that did not reply to the survey have widened the scope of their capital punishment statutes. For example, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions expressed his concern in 1994 and 1995 at reports of the expansion of the scope of the death penalty in China, Iraq, Pakistan, Saudi Arabia and Nigeria (see E/CN.4/1994/7 and E/CN.4/1995/61, para. 375). Furthermore, two countries that had been considered abolitionist de facto in 1989 have resumed executions. 7/

III. ENFORCEMENT OF THE DEATH PENALTY

39. The relatively small number of replies received from retentionist countries can provide no indication of the global use of capital punishment, particularly when as shown above so many of them are in the process of moving towards either the abolition of the death penalty or a moratorium on executions. Of the responding countries that retained capital punishment in 1989, three supplied no information on the number of death sentences and executions (Egypt, 8/ Qatar and Tunisia); two (Belarus 9/ and Ukraine) could not provide any figures for executions and one (Guatemala) gave none for death sentences. With the exception of Tonga, all of the 18 countries that had been retentionist

(including abolitionist de facto) in 1989 for which data was available had imposed death sentences between 1989 and 1993. On the other hand, no executions had been carried out in 12 of those countries (Bosnia and Herzegovina, Burundi, Chile, Greece, Guatemala, Guinea, Mauritius, Poland, Sri Lanka, Thailand, Tonga and Turkey) (see also annex I, table 3 below).

40. A total of 1,807 death sentences were reported in 14 countries, the highest numbers being in Ukraine (494), Sri Lanka (423), Thailand (412), Bangladesh (135), Burundi (133), Belarus (89) and Morocco (76). Nineteen executions were reported in two countries (one in Morocco and 18 in Bangladesh). In four other countries, the date of the last execution fell within the period of the survey, although no numbers were given.

41. All the death sentences and the few executions recorded involved persons over the age of 18. Twenty-two women were sentenced to death but none were executed. Of the 1,807 death sentences recorded, 1,494 (83 per cent) were for offences against the person, presumably murder in most cases; 101 (6 per cent) for drug-related offences; 58 (3 per cent) for offences against property (not specified whether a death ensued or not); 12 (0.7 per cent) for offences against the State; and eight for other offences, including offences against the military code. A total of 1,652 of those sentences were reported to have been handed down in ordinary criminal courts and 22 in military courts (the type of court was not specified in 133 cases).

42. On 31 December 1993, 775 persons, including 16 women, were reported to be under sentence of death in seven countries, of which the largest numbers were in Bangladesh (337), Morocco (203), Sri Lanka (120) and Thailand (100). But four of those countries (Bosnia and Herzegovina, Sri Lanka, Thailand and Mauritius) had not enforced the death penalty and Morocco had executed only one person.

43. However, based on information available both in the past and currently, it is known that executions covering a wide range of offences took place during the quinquennium 1989-1993 in at least 47 countries. As was the case in the fourth survey, the countries in which the greatest number of executions had been carried out in recent years did not send a reply to the fifth survey. According to the log kept by Amnesty International, there were a total of at least 10,231 death sentences and a minimum of 8,052 executions in the five years 1989 to 1993. In 1993 alone, at least 3,760 death sentences were imposed in 61 countries and a minimum of 1,831 executions in 32 countries were noted. In that connection, it may be recalled that the Economic and Social Council, in its resolution 1989/64, invited Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards for protection of the rights of those persons facing the death penalty and the death penalty in general. In operative paragraph 5 of the same resolution, Member States were urged to publish, for each category of offence for which the death penalty was authorized and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency had been granted, as well as information on the extent to which the safeguards had been incorporated in national law.

IV. PENALTIES REPLACING CAPITAL PUNISHMENT

44. For the first time, the fifth survey inquired about the penalties that had replaced the death penalty after abolition. Several trends emerged. First, it was relatively rare for the length of imprisonment to be fixed mandatorily by law. Second, many countries gave the courts the discretion to pass a sentence of either imprisonment for life or a determinate period in prison that varied among countries but was most often for a period of between 15 and 25 years, although terms for economic crimes formerly subject to the death penalty tended to be shorter. Third, although at least one country had no provision for the remission of sentence, most did allow the shortening of the period in custody through various systems of conditional release, often after about two thirds of the penalty had been served.

V. RATIFICATION OF INTERNATIONAL INSTRUMENTS

45. States that were not already a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights were asked whether there were any official initiatives or plans to become a party to the Protocol. Bosnia and Herzegovina, Mauritius, Poland, Sri Lanka and Tonga stated specifically that no such plans existed. The Netherlands reported that it had ratified the Protocol in March 1991; the former Yugoslav Republic of Macedonia had forwarded the instrument of ratification to the Secretary-General in December 1994; and Namibia reported that the Cabinet and the National Assembly had approved Namibia's accession to the Protocol.

46. Greece was promoting the necessary legislative procedures for the ratification of the International Covenant on Civil and Political Rights. Cyprus stated that total abolition of the death penalty would enable it to become a Party to Protocol No. 6 to the European Convention on Human Rights as well as to the above-mentioned Second Optional Protocol. The Czech Republic replied that there was an assumption that the Czech Republic would become a party to the Second Optional Protocol in 1995 or 1996; Croatia had similar plans.

47. Several countries also mentioned their policy in relation to Protocol No. 6 to the European Convention on Human Rights. During 1989-1993, Protocol No. 6 had been ratified by six of the responding countries: the Czech Republic (March 1993), Finland (May 1990), Romania (June 1994), San Marino (March 1989), Slovakia (March 1992) and Slovenia (June 1994). Greece signed the Protocol in 1983 but has not yet ratified it.

VI. IMPLEMENTATION OF THE SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY

48. The Economic and Social Council, in its resolution 1984/50, approved the safeguards guaranteeing protection of the rights of those facing the death penalty on the understanding that they should not be invoked to delay or prevent the abolition of capital punishment.

49. The safeguards comprise the basic guarantees to be respected in criminal justice proceedings to ensure the rights of offenders charged with a capital offence. They state that capital punishment can be imposed only for the most serious crimes. The safeguards cover, inter alia, the right to benefit from lighter penalties under certain conditions and to appeal or seek pardon; exemptions from capital punishment for persons below 18 years of age, pregnant women, new mothers and persons who have become insane; necessary evidentiary requirements; and suspension of executions.

50. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 15, invited those States retaining the death penalty to adopt the safeguards and take the necessary steps to implement them. The Seventh Congress also requested the Secretary-General to widely publicize both the safeguards and the mechanisms for their implementation.

51. Specific recommendations regarding the practical application of the safeguards were adopted by the Economic and Social Council in its resolution 1989/64, which also contains additional guarantees to be respected in capital cases (see annex II below).

52. Some countries that were abolitionist for ordinary crimes, such as Brazil, Greece and the United Kingdom, gave no answers to the questions about safeguards on the grounds that the death penalty did not exist in reality. Others, such as Argentina, Cyprus, Israel, Malta and Mexico, answered those questions in relation to military offences, even though they did not use the death penalty for ordinary crimes either. Retentionist countries did not distinguish between safeguards relating to ordinary crimes and those relating to military or special tribunals for trying crimes against the State and offences by military personnel. Hence, information relating to safeguards before military or special tribunals was only forthcoming from the few States that were abolitionist for ordinary crimes and were also considered abolitionist de facto for military crimes.

> Safeguard 1. "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences."

53. It is not possible to list here all of the wide variety of offences, with their specific legal definitions, for which capital punishment can be imposed in the retentionist countries that responded to the survey; however, a schematic summary of such information is provided in annex III below. In this context, it is useful to distinguish the so-called common or ordinary offences from offences against the State and from offences under military law or the special circumstances of wartime. In each case, the object is to see to what extent the crimes subject to the death penalty meet the criteria set out in safeguard 1, always bearing in mind that in some countries it may be very rare that persons are tried for these offences and even rarer for them to be executed.

54. The definition of "the most serious crimes" may vary in different social, cultural, religious and political contexts, but the emphasis in the safeguard on intention and on lethal or other extremely grave consequences is intended to

imply that the offences should be life-threatening, in the sense that this is a very likely consequence of the action. Indeed, the Human Rights Committee established under the International Covenant on Civil and Political Rights has laid it down that the concept of "the most serious crimes" employed in the Covenant (art. 6, para. 2) must be read restrictively to mean that the death penalty should be a quite exceptional measure. 10/

Ordinary offences

55. Among the responding countries, there was a wide disparity in the offences subject to the death penalty. Of the 18 countries that retained the death penalty for ordinary crimes, Chile, Tonga and Turkey restricted it to various forms of murder. In seven countries, the death penalty could be imposed at the discretion of the court for various drug-related offences associated with the cultivation, production, carrying, sale and purchase of drugs with the intent of trafficking. Some statutes mentioned the specific amounts that brought the offence within the scope of the death penalty (from 2g to 25kg of heroin), but others did not specify a minimum quantity. Capital punishment could be imposed for certain grave instances of rape in four countries, for kidnapping in two countries, for the hijacking of aircraft in two countries, for arson in two countries and for attempts on the life of law enforcement officers in two countries. In certain circumstances, offences ranging from arson to various economic crimes, the abetment of suicide, armed robbery, the abduction of a minor for ransom and offences against public order and public morals might be subject to the death penalty in at least one of the responding countries. In others, the death penalty might be imposed for causing death by explosives, causing death while committing rape, giving false testimony leading to a death sentence on another and manslaughter.

56. In addition, it is known that the laws of other countries that did not respond to the survey contain a similarly wide range of capital crimes, in some cases considerably wider. Other crimes that are subject to the death penalty include, for example, aggravated theft, fraud, smuggling, corruption and bribery, profiteering and other economic crimes, firearms offences, apostasy, producing or distributing pornography, prostitution, brewing and distilling alcohol, and disrupting the work of corrective labour institutions. It appears, therefore, that the death penalty can be imposed for crimes when the intent to kill may not be proven or where the offence may not be life-threatening, which, may in turn, suggest a wide interpretation of both the letter and the spirit of the safeguard.

Offences against the State

57. Although in many retentionist countries capital punishment was retained for certain offences against the State, the death sentence was very rarely imposed (see annex I, table 3 below). In some jurisdictions, the death penalty is limited to offences of waging or attempting to wage war against the State but in others it is available for a wider range of actions that can be broadly grouped under the heading "political offences", including treason, espionage or attempting to seize power by unconstitutional means; heading or organizing an insurrectionalist movement; acts of terrorism and sabotage, including destruction of or damage to buildings, railways and other State property; and

attempts on the life of the Head of State, other government officials or members of foreign embassies. Again, those countries that responded to the survey were not unique in this regard: offences against the State or State officials or involving terrorist activities are known to be punishable by death in at least 40 other countries.

58. Many of these offences appear to be broadly defined, leaving a wide discretion to prosecutors in seeking the death penalty, to the courts in imposing capital punishment and to the responsible authorities in deciding whether a convicted person should be executed. Therefore, in these cases the imposition of the death penalty may not necessarily fall within the definition set out in safeguard 1.

Military and wartime offences

59. The wide range of military offences for which the death penalty can be imposed includes mutiny; desertion; insubordination; refusal to execute an order; abandoning a post, especially by a sentry; cowardice in the face of the enemy; and many other actions in time of war or in a combat situation. The fact that many countries have abolished the death penalty for such offences shows that it is not universally regarded as a necessary means of ensuring that soldiers do their duty.

60. Several countries include under their military codes offences committed against civilian populations, such as genocide, murder and the mistreatment of civilian populations and prisoners. While these are undoubtedly grave crimes, the decision of the United Nations Security Council not to include the death penalty as a possible punishment in the international tribunals relating to the former Yugoslavia and Rwanda should be recalled as an indication that the death penalty may be inappropriate for such crimes.

Mandatory death penalty

61. Five of the responding countries had a mandatory death penalty for at least some ordinary crimes, including, in one of them, offences related to drug trafficking. Even though a mandatory death sentence can be bypassed by commutation, the existence of such laws makes it difficult if not impossible for the court to take into account a variety of mitigating or extenuating circumstances that might remove a particular offence from the category of "the most serious crimes". However, mandatory death sentences exist in several other countries as well.

> Safeguard 2. "Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

62. With the exception of Israel, none of the responding countries that retained the death penalty for ordinary crimes reported that they applied the death penalty retroactively. Burundi, Guinea and Mauritius did not allow an alternative penalty to be imposed on an offender sentenced to death if the death

penalty was subsequently abolished. The retrospective application of the death penalty was allowed by Israel in relation to atrocities and war crimes during the Nazi period. According to the Nazi and Nazi Collaborator's (Punishment) Law 1950, crimes against the Jewish people and crimes against humanity were punishable if committed during the Nazi regime (30 Jan. 1933-8 May 1945) and war crimes were punishable if committed during World War II (1 September 1939-14 August 1945).

> Safeguard 3. "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane." 11/

Persons below the age of 18

63. Burundi, Chile (according to the Andean Commission of Jurists) and Morocco replied that there were no legal provisions to exempt those under 18 years of age from the death penalty. 12/ It was a mitigating factor in Burundi but not in Chile or Morocco. Under Argentinean military law, there was no bar to sentencing offenders under 18 to death, although youth was a mitigating factor. In Cyprus, where no death sentences had ever been imposed under the Military Criminal Code, the minimum age for imposing a death sentence was 16; youth was not a statutory mitigating factor but would be so considered under case law. In Thailand, the minimum age for capital punishment had been set at 20. The United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has expressed concern that death sentences have been handed down on persons who committed the offences in question when they were under 18 years of age, as well as concern that legislation should have allowed this to happen in Algeria, Pakistan and the United States of America (see E/CN.4/1995/61, para. 380).

Pregnant women or new mothers

64. Bangladesh, Bosnia and Herzegovina, Burundi, Egypt, Guinea and Turkey replied that sentences on new mothers would not invariably be commuted to life imprisonment. No women who had been pregnant at time of trial were executed in any country in the quinquennium. Belarus had abolished the death penalty for women completely.

The insane

65. There were no legal provisions to prevent death sentences being carried out on a person who became insane after the commission of the offence and was still insane at the time of trial in Burundi, Poland, Tonga or (according to the Andean Commission of Jurists) Peru. And there were no such legal provisions for those who became insane subsequent to receiving the death sentence in Bosnia and Herzegovina, Burundi, Egypt, Morocco, Peru, Poland, Sri Lanka, Qatar, Tonga or Tunisia, although six of those countries replied that the execution would be postponed until recovery (Bosnia and Herzegovina, Burundi, Morocco, Poland, Sri Lanka and Tonga). However, all responding countries reported that no persons who became insane after the death sentence had been imposed had been executed during the years 1989 to 1993.

The mentally retarded

66. There were no provisions in law to eliminate the death penalty for persons suffering from mental retardation or extremely limited mental competence in Mauritius, Poland, Tonga, Tunisia or (according to the Andean Commission of Jurists) Peru. Tunisia, however, stated that in practice courts did not usually impose the death sentence on mentally retarded persons. In other countries, mental retardation was generally regarded as one of the defences to criminal responsibility that could lead to acquittal. For example, in Sri Lanka the mentally retarded might fall under the general provisions relating to unsoundness of mind. Thailand replied that such suffering was deemed as an extenuating circumstance for the reduction of penalty in accordance with the Thai Penal Code. In Egypt, article 62 of the Egyptian Penal Code provided that loss of senses and faculty of reasoning at the time of commission of crime due to either insanity or mental ailment was considered preclusive of punishment in general. Similarly, Guinea stated that such persons were treated in the same way as the cases of mentally ill persons, who were not responsible for their criminal actions. In Turkey, however, it was a mitigating factor leading to life imprisonment, while in the Ukraine, the person might be compelled to undergo medical treatment.

67. It is difficult to interpret these answers because there is no standard definition of mental retardation and no indication of how severe it must be to lead to acquittal. For instance, in the reply from Belarus it was stated that only persons who had been declared sane (i.e., capable of understanding and controlling their actions) might be criminally prosecuted. If mentally retarded persons or persons with limited mental faculties were aware of the significance of their actions and were able to control them, they were then liable in the manner provided for by the law in the same way as others. In this regard, the Special Rapporteur on Extrajudicial Summary and Arbitrary Executions has noted allegations that in the United States of America death sentences have been imposed and carried out on defendants who were said to suffer from mental retardation, and has also noted that he had received an allegation concerning one such case in Japan (see E/CN.4/1995/61, para. 380).

Maximum age

68. Guatemala and Mexico (for military offences) reported that the maximum age beyond which a person could not be sentenced to death or executed was 60 years.

> Safeguard 4. "Capital punishment may be imposed only when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts."

69. All countries replied that their rules of criminal procedure or constitutions required that evidence must be examined in court and the facts of the case against the defendant established beyond reasonable doubt, truly and fully as the reply from Bosnia and Herzegovina put it, or, as Egypt put it, on certitude and certainty stemming from conclusive evidence attributing the act of the accused, the death penalty in particular having to be passed by unanimous opinion after consultation with the Mufti of the Republic (the official responsible for delivering legal opinions) on the legality of the sentence in

accordance with the provisions of the Islamic Shari'a. Three countries reported that death sentences in the quinquennium had been overturned or commuted because of doubts about guilt: Sri Lanka, Bangladesh (where 4 cases had been overturned or commuted by the President and 37 by the Supreme Court) and Ukraine (where as many as 41 capital sentences had been reversed).

> Safeguard 5. "Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives also possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." 13/

70. Bosnia and Herzegovina (which can be regarded as abolitionist de facto, see annex IV, table 7) stated that, although such a case had not yet occurred, the possibility existed for persons to be executed before the case had received a final judgment from a legally competent authority. Also, there was no guarantee of a fair and public hearing in every case because the Court council might at anv time exclude the public for the entire legal process or part of it if that was necessary to preserve secrecy, public order, the moral interest of persons under age or other special interests, nor did the defendant have a right to defend himself or herself in person.

71. All other responding countries that retained the death penalty affirmed that capital punishment could only be carried out pursuant to a final judgement rendered by a competent court through legal process at which a fair and public hearing was guaranteed; the defendant was informed of the nature of the charge and the evidence against him or her, and had adequate time and facilities to prepare his or her defence, examine witnesses, obtain witnesses on his own behalf under the same conditions, including financial conditions, as the prosecution witnesses against him; and the defendant was presumed innocent until proven guilty.

72. However, the answers to the question whether defendants facing the death penalty were compelled to testify against themselves or confess guilt were hard to interpret. Bosnia and Herzegovina and Bangladesh reported that defendants could be compelled to testify in the witness box and compelled to confess guilt. In Bangladesh, the Criminal Procedure Code required that the accused be examined for the purpose of enabling him to explain any circumstance appearing against him, the object being to enable the accused to explain each and every circumstance in the evidence against him. Similarly, in Guinea the practice was said to be that the accused and witnesses appeared freely and testify, after due hearings of the parties, at a public hearing.

73. In most countries, ordinary crimes under the criminal law that carry the death sentence were heard in the highest criminal courts or the Supreme Court. But in Poland they were heard first in county courts by a bench of two professional and three lay judges, in Belarus in the Supreme Court or in the regional courts or the Minsk Municipal Court, and in Ukraine in regional courts. In several countries, special courts or military tribunals dealt with offences against the State. In Turkey, such offences were heard in courts of national

security rather than the assize courts and in Guatemala, some cases that had led to execution had apparently been dealt with by special military tribunals even though they had not been finally judged in a court of appeal or the Supreme Court of Justice. In Bangladesh, death sentences handed down by the Court of sessions or special tribunals, had to be confirmed by the Honourable High Court. It should be noted that not all responding countries provided information on procedures and safeguards before special or military tribunals; in this regard, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has reported that in a number of cases defence lawyers have had only limited access to their clients and the time allowed for preparation of the defence has not been adequate (see E/CN.4/1994/7, paras. 255-256). Furthermore he expressed concern at ensuring the impartiality and independence of military tribunals and the lack of the effectiveness of review procedures.

74. Although all countries said that adequate time and facilities were available for the preparation of the defence, no specific periods appear to be laid down in law, with the exception of Bosnia and Herzegovina, where the summons with the indictment must be given to the indicted so that there is enough time between the main process and the delivery to prepare the defence (at least eight days). Also, while most countries, with the exception of Sri Lanka and Peru (according to the Andean Commission of Jurists), stated that there was a right to be tried without undue delay, that right was not specifically defined in either law or regulations, except again in Bosnia and Herzegovina, where the president of the Court council was obliged to fix the time of the main process in the period of two months from the day of the receipt of the summons, at the latest, and Ukraine, where the case must be brought up for hearing by the court not more than 10 days (in the event of complications, not more than 20 days) after the day it was submitted to the court. In Bangladesh, the trial in the Court of Sessions had to be completed within 360 working days from the date on which the case was received. Nevertheless, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has expressed concern that, under the Curbing of Terrorist Activities Act 1992, investigations of such offences have had to be completed within 30 (exceptionally 45) days and that the trial, held before a special tribunal, has had to be completed within 60 (exceptionally 90) days (see E/CN.4/1995/61, para. 65).

75. While all responding countries claimed that the defendant could communicate with a counsel of his own choosing, in practice there were restrictions in some countries. In Poland, the Code of Criminal Procedure allowed, in special circumstances, for the prosecutor or a person designated by him to be present during the conference between the lawyer and his client, a provision that, according to the reply, had been strongly criticized. Every country but Tonga, where there were no legal aid finance packages, provided a right to legal assistance for trial and appeals, without payment if the defendant did not have sufficient means to pay for it. However, to qualify for such aid in Mauritius the defendant had to earn less than 3,500 Mauritian rupees (Mau Rs) per month or own goods (excluding wearing apparel and tools of trade) worth less than Mau Rs 50,000. In Ukraine, on the other hand, if counsel was assigned by the court the limit per day was the minimum wage payment. There was, in every country except Poland, free assistance of an interpreter for persons who could not understand or speak the language used in court. In Poland, an interpreter was mandatory under interrogation but in court the defendant was only given a

translation of the charge, indictment and other decisions. It was reported that those provisions had been criticized for not protecting sufficiently the right to defence of such a person.

76. In Israel, there were no specific provisions regarding many of the issues in question because, although the law provided for capital punishment in rare cases, in fact the death sentence had been imposed in Israel only once. Due to the special and particular subject-matter of the relevant laws, questions such as those on the safeguards were practically irrelevant and a yes/no answer did not give an accurate and full response. While in order to convict a person the court must find that person guilty beyond any reasonable doubt, nevertheless John Ivan Demjanjuk was sentenced to death on 18 April 1988. On 29 July 1993, his sentence was overturned by the Supreme Court of Israel after the court examined exceptionally admitted newly discovered evidence at the appeals stage and held that that evidence created the possibility of a reasonable doubt as to the identification of J. D. Demjanjuk as Ivan the Terrible.

77. In this regard it is especially worth noting that alarming reports were received in 1993 and in 1994 by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions about legislation and practice leading to the imposition and execution of death sentences where the defendants did not fully benefit from these guarantees and safeguards (see E/CN.4/1994/7, para. 680 and E/CN.4/1995/61, para. 376).

> Safeguard 6. "Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory."

78. Every responding country 14/ guaranteed the right of appeal against a death sentence. However, the time allowed to make such an appeal varied considerably, from 3 days in Guinea, 5 in Mexico (military law), 7 in Bangladesh, Belarus, Turkey and the Ukraine, 8 in Morocco, 10 in Guatemala and Tunisia to 14 in Sri Lanka and Poland, 15 in Bosnia and Herzegovina, 21 in Mauritius, 30 in Burundi, 30-31 in Thailand and 60 in Tonga.

79. Death sentences were automatically reviewed in Bangladesh, Bosnia and Herzegovina, Guatemala, Poland, Peru (according to the Andean Commission of Jurists), Qatar, Tunisia, Turkey and Ukraine but not in the following countries, where the defendant had to initiate the process: Belarus, Burundi, Chile (according to the Andean Commission of Jurists), Guinea, Mauritius, Morocco, Tonga and Sri Lanka (although in Sri Lanka the prison authorities are obliged by law to assist all prisoners in lodging an appeal against their sentence. In none of those countries were there any initiatives or plans to make the appeal automatic.

> Safeguard 7. "Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment." 15/

80. This safeguard was guaranteed in every country that responded to the survey. There was, however, a limitation of time for preparing a petition for pardon or clemency in Guinea (3 days), Bangladesh and Ukraine (7 days),

Guatemala (8 days) and Tonga (60 days, any further petitions must be lodged as soon as possible). The Criminal Procedure of Thailand laid down that the execution should be carried out within 60 days of the final judgement, except where a petition of pardon was applied for; in that case, the execution should be suspended until after the expiration of 60 days from the date the Minister of the Interior submitted the petition to the King. In Egypt, the sentence was executed if no order for pardon or commutation was issued within 14 days.

> Safeguard 8. "Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to a pardon or commutation of sentence."

81. All the respondents stated that execution was invariably delayed until all appeal, recourse, pardon and clemency proceedings had been exhausted and the outcome communicated to the defendant and his or her legal advisers. The executions could only be carried out by written authority following consideration of appeals and clemency. For example, in Tonga they could be carried out only when signed and assented to by the Privy Council, the last avenue of appeal.

82. However, this may not always be the case in other countries. For example, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions expressed his most profound concern at the clear violation of the right to life when Glen Ashby was executed on 14 July 1994 in Trinidad and Tobago while appeal procedures were still pending (see E/CN.4/1995/61, para. 382).

> Safeguard 9. "Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering."

83. The methods of execution reported were hanging (10 countries for ordinary crimes) and shooting by firing squad (10 countries for ordinary crimes and 5 for military crimes). In none of the responding countries was the offender given a choice of method of execution and only four countries said that consideration was given to minimizing the offender's suffering. In Burundi, Chile (according to the Andean Commission of Jurists) and Guinea, 16/ public executions were allowed. In Burundi, where no executions had been carried out since 1982, they would be carried out at a place determined by the Minister of Justice. Under Argentinean military law, the condemned could be shot in public but there were no executions in the five years 1989-1993.

VII. DISSEMINATION OF THE SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY

84. Banangladesh and Burundi stated that nothing was done to ensure the systematic dissemination of the safeguards guaranteeing protection of the rights of those facing the death penalty. Bangladesh added that existing domestic legislation and regulations were adequate to safeguard the rights of those facing the death penalty. Other countries that responded to the question replied that the safeguards were known in so far as they were incorporated in domestic legislation and regulations or published in official gazettes. Bosnia and Herzegovina stated that if those acts had been ratified they would have to

have been published in its Official Gazette and were thus accessible to all. Egypt replied that the safeguards were contained in its Criminal Procedure Law and the law relating to the organization of prisons and were published in the Official Gazette, which ensured that all relevant persons were informed, as established in Economic and Social Council resolution 1989/64. Tunisia stated that Economic and Social Council decisions were disseminated to the competent authorities, including in training programmes for judges, lawyers and security officials. Thailand commented that during the curriculum of training courses for correctional staff at all levels, every rule and regulation would be explained; correctional staff had to perform their duties according to proper rules and regulations.

85. Belarus, Bosnia and Herzegovina, Burundi, Guatemala, Mauritius and Peru (according to the Andean Commission of Jurists) had no provisions to ensure that defendants or their legal representatives were aware of the safeguards or of corresponding provisions in domestic legislation, nor did they have any plans to set up an adequate system. Bangladesh asserted that persons facing the death penalty were made fully aware of the safeguards through their legal representatives, i.e., the defence counsel. Guinea stated that at all stages of proceedings - before the examining judge, in the Chambre d'Accusation and before the Chief Justice of Appeals - the accused was informed of the charges and the relevant safeguards. Other countries remarked that the safeguards were already sufficiently well known in domestic law. Thailand noted that persons were protected because whether or not a person sentenced to death appealed the verdict must be sent to the Supreme Court for confirmation; material relating to the safeguards would, if necessary, be translated into Thai and disseminated to the officials concerned.

VIII. RESEARCH AND STUDIES

86. Three replies were received to the request for information about research on the death penalty. The Andean Commission of Jurists mentioned a publication on the situation in Peru entitled For Life, Against the Death Penalty and France reported a doctoral thesis in progress under the aegis of the Groupement Européen de Recherches sur les Normativités at its Ministry of Justice. Slovakia answered in the affirmative but gave no examples. Poland mentioned public opinion polls. However, there was no governmental action in any country directed to promote research in this field. The paucity of information elicited on this subject in the fifth survey is in marked contrast with the large amount of information elicited in the fourth survey, 17/ largely because most research and writing on the death penalty is done in the United States of America, which did not respond on this occasion.

IX. CONCLUDING REMARKS

87. It should be recognized that the results analysed in this report are based on replies received from less than one third of the Member States of the United Nations; furthermore, those countries that responded were either weighted heavily towards abolitionism or favourably disposed to abolition (i.e., over half the abolitionist countries responded, compared with only 20 per cent of the

retentionist countries). It is also difficult to draw conclusions by comparing the results of the fifth survey to those of previous surveys because a number of countries that have replied in the past did not respond on this occasion. Nevertheless, the picture that emerges is that an unprecedented number of countries have abolished or suspended the use of the death penalty.

88. The trend towards an increased pace of abolition was already noted in the fourth survey, 11 countries having abolished the death penalty since 1984 (6 in the period 1984-1988 and 5 in 1989-1990), as compared with only 3 during the period 1979 to 1983 (see E/1990/38/Rev.1, para. 59). The changes since 1989 reported in the fifth survey (see para. 31 above) show that 13 countries have abolished capital punishment since 1989 and 5 more have become abolitionist de facto. Only 7 of the 57 countries for which information was received had in recent years carried out any executions and most of those were apparently very sparing in their use of this sanction.

89. When combined with readily available information on the countries that did not respond, the pace of change may be seen to have been quite remarkable. In the years since 1989, 24 countries have abolished the death penalty, 22 of them for all crimes whether in peacetime or in war-time. However, it should be noted that the movement towards abolition is not uniformly widespread. For example, it is more prevalent in Europe, including Eastern Europe, and in South America than it is elsewhere. It should also be noted that capital punishment has been reintroduced in 4 countries since 1989 and at least 2 countries that were formerly considered abolitionist de facto have resumed executions. Furthermore, several counties have expanded the scope of the death penalty as a reaction to perceived upsurges in serious crime, in particular, national crises affecting internal security. If the surveys are to be of value in the future as indicators of the extent to which the death penalty is employed, it will be necessary to find a means of encouraging far more of the retentionist countries to reply to the Secretary-General's request for information.

90. The replies to questions on the safeguards for protection of the rights of those persons facing the death penalty have raised a number of problems. First, it appears that the definition employed in safeguard 1, which concerns the class of crimes to which capital punishment should be restricted, has been widely interpreted so as to include offences without intentional lethal consequences, various political offences and offences related to military discipline. Second, mandatory death sentences, that provide no leeway for mitigating circumstances exist in a number of countries; the Economic and Social Council may wish to consider this issue in order to find appropriate remedies. Third, a specific safeguard for politically motivated offences against the State and military offences might be desirable. Fourth, it is apparent that the wording of the new guarantee concerned with those suffering from mental retardation 18/ may not be effective; consideration may need to be given to providing a clearer definition of mental retardation. Finally, as has been stressed repeatedly by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, it is particularly important to closely monitor the implementation of those safeguards relating to fair trial since it is apparent that they may not always be applied in practice, especially when recourse is made to military or special tribunals at times of perceived national crises or emergencies.

91. In this context, the replies to questions concerning the dissemination of the safeguards may also appear unsatisfactory. Little if any action seems to have been taken to give the safeguards prominence in their own right or to communicate them to all the parties who might be concerned in capital cases. Instead, countries have relied upon the communication of their own laws and procedures, some of which may not give sufficient emphasis to the safeguards.

92. Little information was provided on what has been done to promote research in this field and thus establish a sounder factual basis for policy concerning the case for retaining or abolishing the death penalty, or to ensure that the conditions under which the death penalty is being imposed meet the internationally agreed standards. Those countries that reported abolishing the death penalty during this period either entirely or for certain offences nearly all emphasized that they had done so on the basis of an appeal to human rights - the right to life - and that that form of punishment was not in keeping with modern ideas on how best to deal effectively with crime.

Notes

1/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

2/ The Andean Commission of Jurists submitted questionnaires concerning three countries for which no official governmental replies were received: Chile, Ecuador and Venezuela. The Commission also submitted responses concerning three countries for which official governmental responses were received: Bolivia, Colombia and Peru.

3/ See Amnesty International Report 1993, p. 206.

4/ Armenia, Estonia, Kyrgyzstan, Latvia, Lithuania, the Republic of Moldova and the Russian Federation.

5/ Bhutan, Senegal, Belgium, Suriname, Bahrain, Djibouti, Côte d'Ivoire, Maldives, Madagascar, the Comoros, Brunei, the Niger and Samoa.

6/ Central African Republic, Congo, Mali, Rwanda and Togo.

7/ Sierra Leone carried out 6 executions in 1989 and 26 in 1992, for treason. Trinidad and Tobago executed a man for murder in July 1994, the previous execution having been carried out in November 1979.

8/ The United Nations Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions reported that in Egypt, between December 1992 and the end of September 1993 military courts were said to have sentenced 28 civilians to death, with 18 executions reportedly carried out (see E/CN.4/1994/7, para. 257).

9/ However, it is known from the official Belarus reply to the Council of Europe Survey in 1994 that the rate of executions has been falling in that country: 31 were executed in 1992, 20 in 1993 and 8 in 1994 (see E/CN.4/1994/7, para. 35).

10/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40, annex V, para. 7.

11/ See also annex II, subparagraphs (c) and (d) for additional recommendations.

12/ Some countries appear to have misunderstood this question. For example, Guinea responded that no one could be sentenced to death below the age of 18 but added that the maximum age beyond which a person might not be sentenced to death was 16; it was therefore impossible to interpret such replies.

13/ See also annex II, subparagraph (a) for additional recommendation.

14/ However, Egypt did not answer this question; Argentina whose military law provides no right to appeal unless there has been violation of the law, specified that in such a case it was possible to apply for judicial review.

15/ See also annex II, subparagraph (b) for additional recommendation.

16/ But only for certain of the offences subject to capital punishment.

17/ See also Roger Hood, "The death penalty: a world-wide perspective", a report to the United Nations Committee on Crime Prevention and Control, The International Review of Criminal Policy, special issue, vol. 38 (Oxford University Press, 1989).

18/ See Economic and Social Council resolution 1989/64, para. 1 (d).

Annex I

TABULAR OVERVIEW OF RESPONSES TO THE FIFTH SURVEY

Table 1. Responding countries that are abolitionist for all crimes: dates of abolition, last death sentence, last execution and changes reported

Country	Date of abolition	Date of abolition f. ordina.y offences	Date of last death sentence	Date of last execution	Changes reported
Africa South of the Sahara					
Namibia	1990	..	..	..	Capital punishment prohibited by new Constitution on attaining independence in 1990
Sao Tome and Principe	1990	..	..	-	Death penalty abolished for military offences in 1990
Latin America and the Caribbean					
Bolivia	..	..	1986	1974	
Colombia	1910	..	1909	1909	
Ecuador	1897	..	..	..	
Paraguay	1992	..	1928	1928	Capital punishment abolished for all offences without distinction under new Constitution in 1992
Uruguay	1907	..	..	..	
Venezuela	1863	..	..	..	
Eastern Europe					
Croatia	1990	..	..	..	Capital punishment abolished for all offences under the Constitution in 1990
Czech Republic	1990	..	1989	1989	Capital punishment abolished for all offences in 1990 by vote of the Parliament of former Czechoslovakia: came into effect in July 1990 after formation of Czech Republic
Romania	1990	..	1989	1989	Capital punishment abolished for all offences in 1990 by decree law due to public opinion and the collapse of the Communist dictatorship
The former Yugoslav Republic of Macedonia	1991	..	1987	1988	Capital punishment prohibited by new Constitution in 1991 adopted after attaining independence; new criminal code adopted in 1994

/...

Country	Date of abolition	Date of abolition f. ordinary offences	Date of last death sentence	Date of last execution	Changes reported
Slovakia	1990	..	1988	1989	Capital punishment abolished for all offences in 1990 by vote of the Parliament of former Czechoslovakia; came into effect in July 1990 after formation of Slovakia
Slovenia	1991	..	..	1959	Capital punishment prohibited by new Constitution in 1991; adopted after attaining independence
Western Europe and other countries					
Australia	1984	1984	..	1967	
Austria	1968	1950	..	1950	
Denmark	1978	1930	..	1950	
Finland	1972	1949	1946	1944	
France	1981	..	..	1977	
Germany	1949/87 a/	..	..	1949	
Iceland	1928	..	..	1830	
Luxembourg	1979	..	..	1949	
Monaco	1962	..	..	1847	
Netherlands	1982	1870	..	1952	
Norway	1979	1905	..	1948	
Portugal	1976	1867	..	1847	
San Marino	1865	1848	..	1468	
Spain	1995	1978	1975	1975	In November 1994, bill presented to the Spanish Congress to abolish capital punishment under the Military Penal Code; bill accepted by all parties in April 1995 and to become law after its official publication
Sweden	1973	1921	..	1910	
Switzerland	1992	1937	1945	1945	Capital punishment abolished under military law in 1992

Note: Two dots (..) indicate that data are not available.

a/ Death penalty abolished in the former Federal Republic of Germany in 1949 and the former German Democratic Republic in 1987. Last execution in the former in 1949; date of last execution in the latter not known.

Table 2. Responding countries that are abolitionist for ordinary crimes only: dates of abolition, last death sentence, last execution and changes reported

Country	Date of abolition for ordinary crimes	Date of last death sentence a/	Date of last known execution a/	Changes reported
North Africa and Middle East				
Israel	1954	1962/..	1962/..	
Latin America and the Caribbean				
Argentina	1984	../..	../..	
Brazil	1979	../..	1855 b/	
Mexico	..	../..	1937 b/	
Peru	1979	../..	1979 b/	Death penalty extended for terrorism and treason (offences against the State) in 1993 under the Constitution following a national referendum but no provisions established in penal law
Western Europe and other countries				
Cyprus	1983	1978/never	1962/never	
Greece	1993	1991/1960	1972/1962	Death penalty abolished under ordinary criminal law in 1993. A law providing for the abolition of capital punishment under military law during peacetime expected to be passed soon
Malta	1971	../..	1943/..	Capital punishment abolished in 1990 under military law for offences committed during peacetime
United Kingdom	1965 c/	1964/..	1964/..	

Note: Two dots (..) indicate that data are not available.

a/ Ordinary/military.

b/ Last known execution, type of offence not known.

c/ Capital punishment abolished in Northern Ireland in 1973.

Table 3. Responding countries that are or were retentionist: number of death sentences imposed, number of executions, type of offences and number of persons remaining under death sentence as of 31 December 1993

Country	Last death sentence/ execution	No. of persons sentenced a/			No. of persons executed a/			Type of offence b/		Number remaining under death sentence in Dec. 93		
		Total	Male	Female	Total	Male	Female	Sentences	Executions	Total	Male	Female
North Africa and Middle East												
Egypt	1994/1994	..	..	..	..	..	..	..	..	..	..	..
Morocco	1994/1993	76	74 (16)	2 (1)	1	1	0	76P	1P	203	195	8
Qatar	../..	..	..	..	..	..	..	..	..	..	..	..
Tunisia	1994/1991	..	..	..	..	..	..	..	..	..	..	..
Africa South of the Sahara												
Burundi	1993/1982	133	..	..	0	0	0	..	0	..	..	..
Guinea	1994/1983	7	7	0	0	0	0	7P	0	7	7	0
Mauritius	1993/1987	9	7	2	0	0	0	9D	0	4	2	2
Asia and the Pacific												
Bangladesh	1993/1993	135	134	1	9	9	0	126P, 8S, 1D	9P	337	336	1
Sri Lanka	1994/1976	423	409	14	0	0	0	416P, 7D	0	120	115	5
Thailand	../1987	412	409 (1)	3	0	0	0	273P, 54PR 84D, 1	0	100	..	..
Tonga	1982/1982	0	0	0	0	0	0	0	0	0	0	0
Latin America and the Caribbean												
Chile	1992/1985	5	5	0	0	0	0	5p	..	0	0	0
Guatemala	1992/1983	..	..	..	0	0	0	..	0	..	..	..
Eastern Europe												
Belarus	1994/1994	89	89	0	..	..	..	89P	..	..	..	..
Bosnia and Herzegovina	1993/1975	11	11 (4)	0	0	0	0	4p, 4PR, 3O	0	4	..	..
Poland	1992/1988	1	1	0	0	0	0	1P	0	0	0	0
Ukraine	1994/1994	494	494	0	..	..	..	485P, 4S, 5O	..	..	..	..
Western Europe												
Greece	1991/1972	10	10	0	0	0	0	10P	0	0	0	0
Turkey	../1984	2	0	0	0	0	0		2P		0	..

Note: Two dots (..) indicate that data are not available.

a/ Persons aged 18 or above; sentences imposed by military courts in parentheses.

b/ P = against person; PR = against property; S = against the State; D = drug-related; O = other.

Annex II

SAFEGUARDS GUARANTEEING PROTECTION OF THE RIGHTS OF THOSE FACING THE DEATH PENALTY, a/ AS WELL AS ADDITIONAL RECOMMENDATIONS b/

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, c/ including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

* * *

Further to the above-mentioned safeguards, the Economic and Social Council, in its resolution 1989/64, c/ recommended that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provision for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.

Notes

a/ Economic and Social Council resolution 1984/50, annex.

b/ General Assembly resolution 2200 A (XXI), annex.

c/ Economic and Social Council resolution 1989/64, para.1.

Annex III

TYPES OF CAPITAL OFFENCES IN RETENTIONIST COUNTRIES a/

A. North Africa and the Middle East

1. Egypt

Offences under ordinary criminal law

Premeditated murder with malice aforethought; premeditated murder related to treachery or misdemeanour; rape associated with kidnapping; import, export and traffic in narcotic substances; planting or producing narcotic substances with intent to traffic; formation of a gang with the aim of trafficking in narcotic substances.

Offences under military law and offences against the State

State security felonies from abroad (intelligence crimes); State security felonies from within (attempt to overthrow the Government).

2. Israel

Offences under military law and offences against the State

Genocide; crimes against the Jewish People; crimes against humanity; war crimes; unlawfully discharging firearms under defence (emergency) regulations of 1945; impairment of sovereignty or integrity of the State; causing war with intent to assist the enemy; assistance to the enemy in war; treason during actual fighting.

3. Morocco

Offences under ordinary criminal law

Aggravated murder; assassination; parricide; infanticide; poisoning; kidnapping; torture; barbaric acts; death resulting from certain practices; rape of a minor leading to death; strangulation resulting in death; false testimony leading to a death sentence on a person.

Offences under military law and offences against the State

Attempts on the life of the Royal Family; treason; espionage; offences against the external security of the State; offences against the internal security of the State; voluntary destruction of objects during the defence of the nation; offences against the external security of the State during war; desertion in face of the enemy; refusal to obey an order in the presence of the enemy; violence against sick or wounded persons with the intent to rob; abandoning the post in the presence of the enemy; leaving

service in the presence of the enemy; capitulation contrary to duty and honour.

4. Qatar

Offences under ordinary criminal law

Homicide in the course of robbery (mandatory); murder or preparation or facilitation of the perpetration of a crime; importation, exportation, making, manufacturing or planting of narcotics with the intent of trafficking, in the case of recidivism.

Offences under military law and offences against the State

Intentionally causing the death of the Ruler, the Deputy Ruler or the Heir to the Throne; bearing arms against the State; joining the armed forces of a country in a state of war with Qatar, or instigating thereto; spying for an enemy State (all mandatory).

5. Tunisia

Offences under ordinary criminal law

Premeditated murder; premeditated murder associated with another offence; rape of a female with violence; leading an armed gang with the intent of robbing State property or that of individuals.

Offences under military law and offences against the State

Treason; spying; acts against State security; attempt on the life of the Head of State; going over to the enemy; spying for the enemy; bearing arms against Tunisia.

B. Africa south of the Sahara

1. Burundi

Offences under ordinary criminal law

Parricide; infanticide; murder; poisoning; subjection to a superstition test causing death; cannibalism; murder for purpose of robbery; rape resulting in death; aggravated theft with the use of weapons; damaging the national economy by stealing or destroying buildings, ports, highways, railways.

Offences under military law and offences against the State

Treason; espionage; commanding mercenaries; attempt on the life of the Head of State; attempt to commit massacres; membership of armed gangs; heading

or organizing an insurrectionist movement; desertion in the form of an armed band with weapons; desertion to the enemy; any commander of a unit capitulating in the face of the enemy; treason and conspiracy; rebellion; violation of orders.

2. Guinea

Offences under ordinary criminal law

Manslaughter; murder; poisoning; parricide; castration resulting in death; kidnapping; crimes against children; violence and assault; offences against public morals; obstructing the maintenance of order; destruction or damage of public or private buildings or facilities; arson; use of explosives (all mandatory); infanticide.

Offences under military law and offences against the State

Offences against the internal security of the State; offences against the external security of the State (all mandatory).

3. Mauritius

Offences under ordinary criminal law

Murder; murder of a newborn child; killing of a person by explosive; drug trafficking (all mandatory).

Offences under military law and offences against the State

Stirring up war against the State; plotting with a foreign power; inciting citizens to rise up in arms; stirring up civil war; taking command of armed forces; setting fire to or destroying State property (all mandatory).

C. Asia and the Pacific

1. Bangladesh

Offences under ordinary criminal law

Murder by a person under sentence for transportation for life (mandatory); murder; abetment of the suicide of a child, or of an insane or delirious person or of an idiot or an intoxicated person; murder in dacoity; causing death for dowry; causing death in committing rape; cultivation, production, possession, carrying, sale, purchase or storage of heroin, cocaine and other dangerous drugs, 25kg to 50kg.

Offences under military law and offences against the State

Waging or attempting to wage war or abetting war against Bangladesh; abetment of mutiny if mutiny is committed in consequence thereof; mutiny and insubordination; offences in relation to the enemy.

2. Sri Lanka

Offences under ordinary criminal law

Murder; abetment of suicide; abetment of murder; giving or fabrication of false evidence if an innocent person is thereby convicted and executed (all mandatory); manufacture of heroin, cocaine, morphine or opium; trafficking, possessing, importation of 2gm of heroin and above, 3gm of morphine and above, 500gm of opium and above and abetment of these offences.

Offences under military law and offences against the State

Waging or attempting to wage war or abetting the waging of war against the State; abetment of mutiny if mutiny is committed as a consequence; shamefully abandoning any fortification, post etc.; shamefully casting away arms in the face of the enemy; treacherously communicating with the enemy; assisting the enemy with arms or ammunition or protecting the enemy; voluntarily serving with or aiding the enemy having been made prisoner of war; on active service knowingly committing any act to imperil the success of the army.

3. Thailand

Offences under ordinary criminal law

Rape which causes death; murder committed in some specific manners; abduction of a minor for ransom which causes death to the victim; robbery which causes death to another person; arson or causing an explosion which causes death to another person; manufacture, import or export of narcotics for sale; deceiving, threatening, or unlawfully forcing a female victim or a minor to consume narcotics (all mandatory); rape which causes grievous bodily harm; murder; abduction of a minor for ransom; arson of some specific properties; sale of or having possession for sale of narcotics (more than 100gm).

Offences under military law and offences against the State

Offences against the King, the Queen, the Heir and the Regent (mandatory); insurrection; offences against the external security of the Kingdom; offences against the friendly relations with foreign States.

4. Tonga

Offences under ordinary criminal law

Murder.

Offences under military law and offences against the State

Treason; misconduct in action; assisting the enemy; obstructing operations; offences by and against sentries.

D. Latin America and the Caribbean

1. Argentina

Offences under military law and offences against the State

Treason (mandatory); military rebellion (mandatory); espionage in time of war; physical assault on a higher rank; lack of respect in wartime; insubordination in the face of the enemy; armed violence in wartime; mutiny by higher ranks.

2. Chile

Offences under ordinary criminal law

Homicide with rape or wounding, kidnapping or robbery; death caused by rape; parricide; while serving a life sentence committing another crime punishable by a life sentence.

Offences under military law and offences against the State

Conspiracy against the external security of the State; qualified desertion; unjustified surrender; abandoning command and qualified desertion of post; ill-treatment of State property; deviation of the route of a ship in time of war; loss or damage to a ship; abandoning a squadron or division.

3. Guatemala

Offences under ordinary criminal law

Parricide (mandatory if the dangerousness of the offender can be proved); murder; aggravated rape (mandatory if the victim dies and is less than 10 years old); piracy and kidnapping (mandatory if the victim dies); assassination.

Offences under military law and offences against the State

Treason and espionage; rebellion and sedition; offences against military service (various provisions); offences against military authority, sentries, patrols or armed troops; desertion; acts of violence and looting; theft and robbery (all mandatory).

4. Mexico

Offences under military law and offences against the State

Treason; espionage; escape of prisoners, offences against international law (all mandatory); insurrection (mandatory, except for those who surrender before any armed action is taken against forces of the Government of the Republic); infraction of sentries, special duties of sailors, airmen, military duties, offences against military honour, abandonment of service (mandatory in wartime); false alarm (mandatory in wartime); unlawful assembly (mandatory in wartime); insubordination (mandatory, except when a subordinate has been obliged to act); abuse of authority; exceeding of powers and usurpation of command or authority.

5. Peru

Offences under military law and offences against the State

Treason and terrorism, beyond cases occurring in a foreign war (under the Constitution); treason in an external war.

E. Eastern Europe

1. Belarus

Offences under ordinary criminal law

Deliberate murder under aggravating circumstances; rape of a minor female committed by a particularly dangerous repeat offender or resulting in severe consequences; attempt on the life of a policeman, member of the volunteer civilian patrol, military serviceman or other person or on the life of their close relatives; hijacking an aircraft on the ground or during flight, or the seizure of such an aircraft for the purpose of hijacking it, committed with the use of force or threats or in a way causing death, serious bodily harm or an accident involving the aircraft.

Offences under military law and offences against the State

Treason; conspiracy to seize power by unconstitutional means when it results in the death of a person; spying; assassination of the representative of a foreign government for the purpose of provoking a war or international complications; acts of terrorism (attempt on the life of a

government or public figure, committed in connection with that person's governmental or public activity and for the purpose of destabilizing the social order etc.); sabotage (the causing of explosions or fires, or other actions aimed at the killing of a large number of persons, the destruction or damage of buildings, facilities, roads, railway etc.) for the purpose of destabilizing the social order or interfering with the activities of the State authorities; organized activity aimed at preparing or committing particularly dangerous offences against the State; participating in an anti-State organization; banditry; actions disrupting the work of correctional labour institutions (committed by particularly dangerous repeat offenders and by persons who have previously committed serious crimes); evasion of mobilization call-up notice committed in time of war; looting; violence against the population in an area of miliary activities; resisting a superior or forcing him to violate his official duties, committed by a group of persons, or with the use of weapons, or resulting in serious consequences, if these actions were connected with the murder of a superior or any other person performing military duties or in a time of war or in a combat situation; the following offences when committed at a time of war or in a combat situation: insubordination (i.e. an overt refusal to carry out a superior's order); violent actions against a superior; abandonment of one's unit; evasion of military service by self-mutilation or in some other way; deliberate destruction or damage of military property; violation of the rules of combat duty with respect to the timely detection and repulse of a sudden attack; abuse of authority or official position by a superior or an official etc.; handing over or surrender to the enemy the means of waging war, when these actions were committed for the purpose of aiding the enemy; abandonment of a sinking warship by a commander who has not fully carried out his official duties, or by a member of the ship's crew without a proper order from the commander; abandonment of the field of battle without permission during combat or refusal to use arms during a battle; voluntary surrender for reasons of cowardice or faint-heartedness.

2. Bosnia and Herzegovina

Offences under ordinary criminal law

The gravest cases of murder; the gravest cases of aggravated theft and burglary-robbery with a murder committed; aircraft hijacking; endangering the safety of an aircraft flight.

Offences under military law and offences against the State

Acknowledgement of the capitulation and occupation of the country; murder of the highest State officials; the gravest cases of offences against the State; genocide; war crimes against the civilian population; war crimes against the wounded or sick; illegal killing and wounding of enemies; the gravest cases of offences against military duties; the gravest cases of offences committed during war or immediate danger of war; attack on an army officer during his duty; passing over and surrendering to the enemy; not fulfilling an order during combat; intentional absence for duty during

combat; leaving positions against an order; prematurely leaving a damaged vessel or aircraft; weakening of fighting morale in a combat situation; not securing the safety of an army unit; not fulfilling an order during mobilization.

3. Poland

Offences under ordinary criminal law

Murder, armed robbery.

Offences under military law and offences against the State

Treason; acts pursuant to a seditious conspiracy; espionage; terrorism; sabotage; refusal to execute an order in a combat situation; violation of the obligation to defend the State during time of mobilization or war; murder or mistreatment of the civilian population and prisoners of war.

4. Ukraine

Offences under ordinary criminal law

Murder under aggravating circumstances; attempt on the life of a police officer or people's militia or servicemen in connection with their activities in maintaining law and order.

Offences under military law and offences against the State

Attempts on the lives of State officials or foreign representatives; offences committed in wartime or during military action.

F. Western Europe and other States

1. Cyprus

Offences under military law and offences against the State

Treason and piracy (as specified in the Law of England); instigating invasion; treason; surrender of entrusted post by a military commander; capitulation in an open place by a commander of an armed military unit; instigating and/or leading a revolt with armed forces; transmission of military secrets to a foreign State or spy or agent; inciting and/or leading a revolt among prisoners of war.

2. Turkey

Offences under ordinary criminal law

Murder of a legitimate descendant or ascendant; murder of a Member of Parliament; multiple murder; murder committed with premeditation; murder accompanied by torture or acts of barbarism; murder committed by means of fire or flooding; murder committed with the object of facilitating the commission of a criminal offence; murder committed for the purpose of reaping the fruits of a crime or concealing the preparation of a crime; murder actuated by anger arising from the failure of an attempt to commit a crime; murder with the object of concealing a crime or destroying evidence of a crime; murder committed in the context of a vendetta.

Offences under military law and offences against the State

Attacks against the independence, integrity or unity of the State and various forms of this offence.

3. United Kingdom of Great Britain and Northern Ireland

Offences under military law and offences against the State

High treason and other treasonable acts (mandatory); piracy with violence; certain treasonable and mutinous offences under the Armed Forces Act; serious misconduct in action with intent to assist the enemy; assisting the enemy with intent to do so; obstructing operations or giving false air signals with intent to assist the enemy; mutiny or incitement to mutiny with the object of avoiding duty in connection with operations or impeding the performance of such operations against the enemy; failure to suppress or report a mutiny with intent to assist an enemy.

Notes

a/ Summaries based on the replies received to the fifth survey.

Annex IV

SUPPLEMENTARY TABLES

Table 1. Status of capital punishment in May 1995: countries or areas that are retentionist a/

Afghanistan
Albania
Algeria
Armenia
Azerbaijan
Bahamas
Bangladesh
Barbados
Belarus
Belize
Benin
Botswana
Bulgaria
Burkina Faso
Cameroon
Chad
Chile
China
Cuba
Democratic People's Republic of Korea
Dominica
Egypt
Equatorial Guinea
Eritrea
Estonia
Ethiopia
Gabon
Georgia
Ghana
Grenada
Guyana
India
Indonesia
Iraq
Jamaica
Japan
Jordan
Kazakstan
Kenya
Kuwait
Kyrgyzstan
Lao People's Democratic Republic
Latvia
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Lithuania
Malawi
Malaysia
Mauritania
Mauritius
Mongolia
Morocco
Myanmar
Nigeria
Oman
Pakistan
Poland
Qatar
Republic of Korea
Republic of Moldova
Russian Federation
Saudi Arabia
Sierra Leone
Singapore
Somalia
South Africa
St. Vincent and the Grenadines
St. Christopher and Nevis
St. Lucia
Sudan
Swaziland
Syrian Arab Republic
Tajikistan
Taiwan, Province of China
Thailand
Trinidad and Tobago
Tunisia
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Republic of Tanzania
United States of America
Uzbekistan
Viet Nam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

Note: The above-mentioned countries or areas retain the death penalty for ordinary crimes. Most of them are known to have carried out executions during the past 10 years; however, in some cases it is difficult to ascertain whether or not executions have in fact been carried out.

a/ Total 92 countries or areas.

Table 2. Status of capital punishment in May 1995: countries that are completely abolitionist a/

Country	Date of abolition	Date of abolition for ordinary crimes	Date of last execution
Andorra	1990	..	1943
Angola	1992	..	..
Australia	1984	1984	1967
Austria	1968	1950	1950
Bolivia	..	..	1974
Cambodia	1989	..	..
Cape Verde	1981	..	1835
Colombia	1910	..	1909
Costa Rica	1877	..	..
Croatia	1990	..	..
Czech Republic	1990	..	1989
Denmark	1978	1930	1950
Dominican Republic	1966	..	..
Ecuador	1906	..	..
Finland	1972	1949	1946
France	1981	..	1977
Gambia	1993	..	1981
Germany	1949/1987 b/	..	1949
Guinea-Bissau	1993	..	1986
Haiti	1987	..	1972
Holy See	1969	..	..
Honduras	1956	..	1940
Hungary	1990	..	1988
Iceland	1928	..	1830
Ireland	1990	..	1954
Italy	1994	1947	1947
Kiribati	..	..	c/
Liechtenstein	1987	..	1785
Luxembourg	1979	..	1949
Marshall Islands	..	..	c/
Micronesia	..	..	c/
Monaco	1962	..	1847
Mozambique	1990	..	1986
Namibia	1990	..	1988

Country	Date of abolition	Date of abolition for ordinary crimes	Date of last execution
Netherlands	1983	1870	1952
New Zealand	1989	1961	1957
Nicaragua	1979	..	1930
Norway	1979	1905	1948
Palau	..	..	..
Panama	..	..	1903
Paraguay	1992	..	1928
Portugal	1976	1867	1847
Romania	1990	..	1989
San Marino	1865	1848	1468
Sao Tome and Principe	1990	..	c/
Slovakia	1990	..	1989
Slovenia	1991	..	1959
Solomon Islands	..	1966	c/
Spain	1995 d/	1978	1975
Sweden	1973	1921	1910
Switzerland	1992	1937	1945
The former Yugoslav Republic of Macedonia	1991	..	1988
Tuvalu	..	..	c/
Uruguay	1907	..	..
Vanuatu	..	..	c/
Venezuela	1863	..	..

Note: Two dots (..) indicate that data are not available.

a/ Total 56 countries.

b/ Death penalty abolished in the Federal Republic of Germany in 1949 and in the German Democratic Republic in 1987. Last execution in the former in 1949; last execucion in the latter not known.

c/ No executions since independence.

d/ Bill for abolition of capital punishment accepted by all parties in Spain in April 1995; will become law after official publication.

Table 3. Status of capital punishment in May 1995: countries that are abolitionist for ordinary crimes only a/

Country	Date of abolition for ordinary crimes	Date of last execution
Argentina	1984	..
Brazil	1979	1855
Canada	1976	1962
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1979	1964
Greece	1993	1972
Israel	1954	1962
Malta	1971	1943
Mexico	..	1937
Nepal	1990	1979
Peru	1979	1979
Seychelles	..	b/
United Kingdom	1965 c/	1964

Note: Two dots (..) indicate that data are not available.

a/ Total 14 countries.

b/ No executions since independence.

c/ Capital punishment abolished in Northern Ireland in 1973.

Table 4. Status of capital punishment in May 1995: countries that can be considered abolitionist de facto a/ b/

Country	Date of last execution	Country	Date of last execution
Bahrain	1977	Maldives	1952
Belgium	1950	Mali	1980
Bhutan	1964	Nauru	c/
Bosnia and Herzegovina	1975	Niger	1976
Brunei Darussalam	1957	Papua New Guinea	1950
Burundi	1982	Philippines	1976
Central African Republic	1981	Rwanda	1982
Congo	1982	Samoa	c/
Comoros	c/	Senegal	1967
Côte d'Ivoire	..	Sri Lanka	1976
Djibouti	c/	Suriname	1984
Guatemala	1983	Togo	..
Guinea	1983	Tonga	1982
Madagascar	1958	Turkey	1984

Note: Two dots (..) indicate that data are not available.

a/ Countries that retain the death penalty for ordinary crimes but have not executed anyone during the last 10 years or more. In keeping with the system of classification used in the quinquennial reports on capital punishment, those countries can be considered abolitionist de facto in that they have not carried out executions for the last 10 years or more. However, death sentences have continued to be imposed in some countries and not all of them have the policy of regularly commuting sentences.

b/ Total 28 countries.

c/ No executions since independence.

Table 5. Countries that have abolished capital punishment since 1980 a/ b/

Country	Year	Offences for which capital punishment abolished	
		All offences	Ordinary offences
Cape Verde	1981	X	
France	1981	X	
Netherlands	1982	X	
Cyprus	1983		X
El Salvador	1983		X
Argentina	1984		X
Australia	1984	X	
Haiti	1987	X	
Liechtenstein	1987	X	
Cambodia	1989	X	
New Zealand	1989	X	
Andorra	1990	X	
Croatia	1990	X	
Czech Republic	1990	X	
Hungary	1990	X	
Ireland	1990	X	
Mozambique	1990	X	
Nepal	1990		X
Namibia	1990	X	
Romania	1990	X	
Sao Tome and Principe	1990	X	
Slovakia	1990	X	

Country	Year	Offences for which capital punishment abolished	
		All offences	Ordinary offences
Slovenia	1991	X	
The former Yugoslav Republic of Macedonia	1991	X	
Angola	1992	X	
Paraguay	1992	X	
Switzerland	1992	X	
Gambia	1993	X	
Greece	1993		X
Guinea-Bissau	1993	X	
Bolivia	..	X	
Italy	1994	X	
Spain c/	1995	X	

Note: Two dots (..) indicate that data are not available.

a/ Total 33 countries.

b/ In chronological order.

c/ Bill for abolition of capital punishment accepted by all parties in Spain; will become law after its official publication.